IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1630 of 1983

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANEKLAL NATOTTAM VYAS & 4 - Appellant(s)
Versus
GULAM RASUL JALAMBHAI & 2 - Defendant(s)

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Appearance :
MR RM VIN for Appellants.
MR RAMNANDAN SINGH for Respondent Nos.1 - 2.
NOTICE SERVED for Respondent No.3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/08/2007

ORAL JUDGMENT

1. The claimants, being partly aggrieved by the award dtd.16/10/1982 passed by the Motor Accident Claim Tribunal, Nadiad in Motor Accident Claim Petition No.364

of 1981, are before this Court with a submission that the tribunal erred in not awarding better compensation to the claimants.

2. It is be noted that the Insurance Company, driver or owner of the offending vehicle have not filed any Cross Appeal or Cross Objection challenging the findings recorded by the tribunal that the offending vehicle was driven rashly and negligently and that the driver, owner and the insurance company are liable to answer the claim made by the claimants. Under the circumstances, this Court is required to consider the only question that whether the amount awarded in favour of the claimants is reasonable or not.

3. Mr.R.M. Vin, learned counsel for the appellants, after taking me through the evidence and findings recorded by the tribunal, submitted that the tribunal while assessing the income in-presentee to be Rs.750=00 erred in not taking into consideration future prospects of the deceased and erred in awarding less amount. According to him, if Rs.750=00 was the monthly income of the deceased, then, future income should have been assessed at Rs.1100=00 and the dependency should have been assessed at Rs.750=00 per month i.e.

Rs.250=00 in addition to what the tribunal has already assessed.

4. Mr.R.N. Singh, learned counsel for the respondent Nos.1 and 2 – owner and driver, submitted that the tribunal was justified in making the award and the tribunal also erred in making award of Rs.15,000=00 in favour of the claimants under the head of pain, shock and suffering which was undergone by the deceased. He submits that no interference is called for.

5. From the evidence available on the records and the findings recorded by the tribunal, it can safely be held that the deceased was earning a sum of Rs.750=00 per month.

6. The Supreme Court had repeatedly observed that to the income earned in-presentee, double of the income should be added to reach to the maximum figure which one can earn at the peak of his career and if the same is divided by two, it will bring out figure of average income which the deceased could have earned all through his life.

7. In the present case, if Rs.750=00 per month could be the income, then, peak income would be Rs.2250=00 and 50% of the same would be Rs.1125=00. I accordingly hold that the average income, which the deceased was

earning or could earn, would be Rs.1125=00 per month, out of which, if an amount of Rs.375=00 is deducted towards personal expenses of the deceased, then, the dependency of the family would be Rs.750=00 per month, or, to be more clear Rs.250=00 in addition to what has been assessed by the tribunal. The claimants would be entitled to compensation at the rate of Rs.750=00 per month and not at Rs.500=00 per month. They would be entitled to Rs.3000=00 per year in addition to what has been awarded in their favour, applying multiplier of 15, as applied by the tribunal, I hold that the total dependency, in addition to what has been already awarded, would be Rs.45,000=00.

8. Though the learned counsel for the respondents submits that the sum of Rs.15,000=00 should be deducted from this amount of compensation, but in absence of any Cross Appeal or Cross Objection, I am unable to adjust the said amount.

9. The appeal is partly allowed. It is held that in addition to the amount awarded by the tribunal, the claimants would be entitled to a sum of Rs.45,000=00 with interest at the rate of 6% per annum from the date of the claim petition till realisation from the respondents, who would be jointly

and severally answerable to the claim made by the claimants. The appeal is allowed to the extent indicated above. No costs.

(R.S. GARG, J.)

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